

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE STRINGER,

Plaintiff,

CASE NO. 17-CV-10998

v.

HON. GEORGE CARAM STEEH

MICHAEL LENNOX and
BRANDON FORD,

Defendants.

**ORDER ACCEPTING REPORT AND
RECOMMENDATION (Doc. 43) AND GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Doc. 23)**

Plaintiff Dwayne Stringer, a *pro se* prisoner, brought this 42 U.S.C. § 1983 suit alleging excessive force in violation of the Eighth Amendment against correction officials Michael Lennox and Brandon Ford. He alleges that Defendants attacked him on May 8, 2010. Plaintiff filed a prior lawsuit in this court arising out of the same incident which this court dismissed for failure to exhaust administrative remedies. Defendants in this suit filed a motion for summary judgment based on Plaintiff's failure to exhaust his administrative remedies. The matter was referred to Magistrate Judge Stephanie Dawkins Davis. She has now issued her report and recommendation which recommends that Defendants' motion for summary

judgment be granted based on the doctrine of collateral estoppel which bars Plaintiff from relitigating the prior finding that he failed to exhaust his administrative remedies as to his excessive force claim arising from the events of May 8, 2010.

The court has reviewed the file, record, and magistrate judge's report and recommendation. Plaintiff has filed three letters to the court, which the court has construed as timely objections, and has duly considered. "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* A district court need not conduct de novo review where the objections are "[f]rivolous, conclusive or general." *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curium) (citation omitted). Here, the objections are frivolous and general and do not specifically address the findings and recommendations of the Magistrate Judge. Having failed to demonstrate a genuine issue of material fact that the doctrine of collateral estoppel does not apply and bar his claims, or that he exhausted his administrative remedies, the court accepts the report and recommendation of the Magistrate Judge.

The court also considers Plaintiff's request in his letter to the clerk that the court appoint him an attorney. Plaintiff has failed to establish exceptional circumstances which would justify deviation from the general rule that courts do not appoint counsel in civil matters. See *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993) ("Appointment of counsel in a civil case is not a constitutional right. It is a privilege that is justified only by exceptional circumstances.") (internal quotation marks and citation omitted).

For the reasons discussed above, IT IS ORDERED that the magistrate judge's report and recommendation (Doc. 43) is ACCEPTED. IT IS FURTHER ORDERED that plaintiff's objections (Doc. 44 and 45) are OVERRULED. IT IS FURTHER ORDERED that defendants' motion for summary judgment (Doc. 23) is GRANTED. In addition, because any appeal of this order would not be taken in good faith, Plaintiff is DENIED leave to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

Dated: September 18, 2018

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on September 18, 2018, by electronic and/or ordinary mail and also on Dwayne Stringer #199442, Gus Harrison Correctional Facility, 2727 E. Beecher Street, Adrian, MI 49221.

s/Barbara Radke
Deputy Clerk